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[APPELLATE CIVIL JURISDICTION]

AITKEN, J.

December 19, 1939.

K.S.R.M. VEERAPPA CHETTIAR & ANOTHER

v.

A.T.K.P.L.S.P. SUPRAMANIAN CHETTIAR.

[PENANG SUIT No. 131 of 1939]

Practice—appeal—stay of—jurisdiction of a single Judge to order—grounds on which stay may be granted.

In a proper case a single judge, sitting as a Judge of the Court of Appeal, has jurisdiction to order the stay of an appeal until the appellant has paid to the Respondent the taxed costs of the trial at the first instance, or at any rate until he has deposited the sum in Court to abide by the result of the appeal.

MOTION.

R. D. Hume for the Defendant—Appellant.

N. Raghavan for the Plaintiff—Respondent.

Cur. Adv. Vult.

Aitken, J.—The Plaintiff-Respondent has applied to me, sitting as a single Judge of the Court of Appeal, for an order that the Defendant-Appellant's appeal from my judgment herein of the 13th of November, 1939, may be stayed (1) until he (the Defendant-Appellant) shall pay to the Plaintiff-Respondent or his Solicitors the sum of $1,040.85 being the amount of the taxed costs payable to the Plaintiff-Respondent under and in accordance with the said judgment, and (2) until he (the Defendant-Appellant) shall pay into Court a further sum of $500/- towards security for costs.

Although I am the Judge whose judgment is in question in this appeal I think that I have jurisdiction to hear and decide this interlocutory application. I also think that I ought to do so in view of the non-availability of any other Judge.

The Defendant-Appellant has already paid $500/- into Court by way of security for costs, and in my opinion that is sufficient. The record of appeal is a very small one, and the whole appeal turns on one clear cut point of law which should not require any exhaustive argument. That disposes of this second branch of this application.

As to the first branch of the same, in my opinion it should succeed. The facts of the case, which are fully set out in my judgment, disclose—

1. That so long ago as December, 1931, the Defendant-Appellant obtained Rs. 20,000 from the Plaintiff-Respondent under and in accordance with a judgment which was subsequently set aside as against the Plaintiff-Respondent on the ground that it was wrong.
2. That the Defendant-Appellant was ordered to repay this amount of Rs. 20,000 and interest thereon to the Plaintiff-Respondent by an Order of the High Court of Rangoon dated the 10th of July 1933.
3. That the Defendant-Appellant has been successfully evading the obligation imposed on him by that Order ever since it was made.
4. That his defence to the claim in this action, though raising a difficult question of law, is entirely without any substantial merits.

In addition to these facts it seems clear that the Defendant-Appellant, though in possession of the sinews of legal warfare, is taking every care and precaution to prevent any of those sinews from falling into the hands of the enemy to whom he undoubtedly owes a large sum of money.

In all these circumstances I think it is unreasonable that this appeal should be allowed to continue unless and until the Defendant-Appellant has paid the Plaintiff-Respondent his taxed costs of the trial at first instance, or at any rate deposited them in Court to abide by the result of the appeal. To my mind the Court of Appeal has an inherent jurisdiction to order a stay of the proceedings in an appeal whenever it would be unreasonable to allow them to continue; and I do not think it is reasonable to allow the Defendant-Appellant to carry on this litigation with the sole object of evading his obligations to the Plaintiff-Respondent, without first making some provision for the payment of the costs and expenses which the latter has already incurred at Penang, in the event of the judgment herein at first instance being upheld. I therefore order a stay of the proceedings in this appeal until the sum of $1,040.85 is paid over to the Plaintiff-Respondent, or his Solicitors, or is deposited in Court to abide by the result of this appeal.

And the Defendant-Appelllant must pay the Plaintiff-Respondent his costs of this motion.

Order accordingly.